

AMERICAN PETROFINA COMPANY OF TEXAS

IBLA 83-560

Decided February 14, 1985

Appeal from decisions of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offers, M 56591 and M 56683.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Drawings -- Rules of Practice:
Appeals: Notice of Appeal

Where a decision of a state office prematurely rejects an oil and gas lease offer before the expiration of a period of time granted to the offeror to submit various documents, the rejection effectively suspends the running of the time for compliance, and where an appeal is timely taken from such a premature rejection and the documents in question are submitted during the pendency of the appeal, the submission will be considered timely.

APPEARANCES: Robert E. Anderson, Esq., Dallas, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

American Petrofina Company of Texas (Petrofina) has appealed from decisions of the Montana State Office, Bureau of Land Management (BLM), both dated March 23, 1983, rejecting oil and gas lease offers M 56591 and M 56683 because the offers were signed by an attorney-in-fact and did not have a copy of the power of attorney attached to the offer documents or refer to a serial number under which the power of attorney was filed.

Petrofina was the successful drawee for parcels MT-102 and MT-194 in the September 1982 simultaneous oil and gas drawing. On February 22 and 24, 1983, notice of its success was sent to appellant, together with copies of the lease offers and required stipulations. The notice stated that the documents must be signed by the appellant or his attorney-in-fact and returned to the Montana State Office within 30 days from the date of receipt. The notices were received by Petrofina on February 28 and March 2, 1983. On March 14, 1983, the Montana State Office received the executed form 3110-2 and stipulations. The documents were signed by J. D. Caddell, as attorney-in-fact for appellant.

On March 23, 1983, BLM issued decisions rejecting appellant's lease offers. The reason for the rejection given by BLM was that appellant had failed to file a copy of the power of attorney authorizing its attorney-in-fact to execute the lease offer and stipulation documents or make reference to the serial number under which the power of attorney had previously been filed, as required by 43 CFR 3112.4-1(b) (1982), now 43 CFR 3112.6-1(b). ^{1/} Appellant timely filed a notice of appeal.

On appeal, appellant asserts that the BLM decisions should be reversed because, "[B]y two separate actions, the Bureau of Land Management led Offeror to believe it need not comply with, or effectively prevented Offeror from literally complying with, the provisions of 43 C.F.R. § 3112.4-1(b)." Appellant contends that on September 10, 1982, it attempted to update its corporate qualifications file, MT-065500, by filing two certificates, both of which indicated that J. D. Caddell had been appointed as an attorney-in-fact for the appellant corporation. Appellant points out that by notice dated September 30, 1982, the certificates were returned with the statement that an amendment to the regulations had "eliminated the requirement that documents relating to qualifications be submitted prior to lease acquisition." Appellant avers that it met with similar results when it attempted to update its qualifications file in Idaho.

Appellant states that, after the receipt in late February 1983 of the results of the simultaneous drawing for September 1982, it was uncertain concerning what the regulation required. Appellant concluded that no advance filing of any kind was required other than completion of the offer to lease and the tender of the first year's rental. Petrofina contends that the BLM decision should be reversed because it substantially complied with 43 CFR 3112.4-1(b), in that a certified copy of a resolution appointing J. D. Caddell as its attorney-in-fact had been filed in the Montana State Office prior to March 7, 1983, but that it had been returned by BLM. Appellant also contends that it did not receive a serial number under which its authorization of power of attorney was filed until April 22, 1983. For reasons set forth below, we reverse the decisions on appeal.

[1] Key to our determination is the fact that the State Office decision issued prematurely. The applicable regulation provided that an offeror had 30 days in which to return the properly signed lease forms and submit the necessary advance rentals. See 43 CFR 3112.4-1(a) (1981). Appellant received the two lease offer forms on February 28 and March 2, 1983. Thus, pursuant to the regulation, the properly completed lease forms and rentals were due on March 30 and April 1, respectively. BLM, however, rejected both lease offers by decisions dated March 23, over 1 week prior to the running of the 30-day period. This was in error.

^{1/} The regulations covering oil and gas leasing on Federal lands were revised, effective Aug. 22, 1983. 48 FR 33678 (July 22, 1983). All citations used in this decision refer to those regulations in effect at the time of the determination by the Wyoming State Office.

We recognize that, assuming it to be applicable, 2/ the regulation might be literally read to require that the attorney-in-fact submissions mandated by the regulation be submitted with the signed lease. But, in Northwest Exploration Co., 73 IBLA 123 (1983), the Board examined this exact question and held that so long as the attorney-in-fact documentation is submitted within the 30-day period, it is immaterial whether or not the documents actually accompany the signed lease offer.

In the instant case, unlike the situation in Northwest Exploration Co., *supra*, the documents were not filed within the original 30-day period, though an attempt had been made to update the corporate qualifications file prior thereto. As noted above, however, this grant of 30 days was, itself, cut short by BLM's premature action in rejecting the lease offers.

While in Fortune Oil Co., 71 IBLA 153, 90 I.D. 84 (1983), we emphasized that the filing of a premature or interlocutory appeal does not stay the running of a period for compliance, our decision therein was directed to actions of an applicant or offeror. Here, it was the action of BLM rejecting appellant's offers which prematurely terminated the 30-day period for performance granted by the regulations. We hold that, in such circumstances, the running of the 30 days for compliance was thereby suspended during the pendency of this appeal. Inasmuch as appellant has subsequently submitted the required documents, failure to comply with the showings required by 43 CFR 3112.4-1(b) (1981) is no longer a basis for rejection of the offers. Accordingly, the decisions appealed from must be reversed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Montana State Office are reversed and the case files are remanded.

James L. Burski
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge

2/ It is certainly open to question whether this application was properly treated as an attorney-in-fact filing rather than one made by a corporate officer or "member" which failed to properly disclose the relationship of the signatory to the offeror. If it were deemed the latter, our recent decision in Corinth Partnership (On Remand), 83 IBLA 277 (1984), would require us to vacate the decision on that basis. It is, however, unnecessary for us to decide this precise question, since, as the text indicates, *infra*, the decision of the State Office must be reversed even if we were to assume that the attorney-in-fact regulation properly applied. But see Enserch Exploration, Inc., 70 IBLA 25 (1983).

ADMINISTRATIVE JUDGE FRAZIER DISSENTING:

I think resolution of this appeal should focus on appellant's failure to comply with the applicable regulations. Under 43 CFR 3112.4-1(a) (1981) the first-qualified applicant has 30 days from receipt of notice in which to return the lease offer and first year's rental to the proper BLM office. 43 CFR 3112.4-1(b) provides that any attorney-in-fact signing the lease offer or paying the rental must file together with the lease offer and/or rental a copy of his or her power of attorney or reference to the serial number under which such authorization is filed. Failure to comply with the requirements of 43 CFR 3112.4-1 results in automatic disqualification of an applicant's lease offer. Anadarko Production Co., 83 IBLA 148 (1984); Thomas M. Bloch, 76 IBLA 364 (1983). While the required filings need not be submitted together, they must all be received by BLM within 30 days. See Northwest Exploration Co., 76 IBLA 123, 126 (1983).

Appellant did not provide a copy of the power of attorney or reference to a serial number within 30 days as required by the regulations. Accordingly, appellant's lease offer should be rejected. Anadarko Production Co., *supra*; Thomas M. Bloch, *supra*.

The fact that the BLM decisions rejecting the lease offers are dated within the 30-day period allowed for compliance does not affect appellant's rights or responsibility with respect to compliance with the regulations. The decisions were received on March 31, 1983. On that date, the time for compliance as to lease M 56591 had expired. With respect to lease offer M 56683, appellant had 1 day remaining to comply with the regulation. The critical consideration is whether appellant complied with the regulations. Clearly, appellant did not. I would affirm the BLM decision.

Gail M. Frazier
Administrative Judge

